

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP480

Cir. Ct. No. 2012SC5018

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

WAUKESHA MEMORIAL HOSPITAL,

PLAINTIFF-RESPONDENT,

V.

ADAM R. NIERENBERGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
LEE S. DREYFUS, JR., Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Adam R. Nierenberger, *pro se*, appeals the judgment of \$1803.34² for services rendered at Waukesha Memorial Hospital

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

following his WIS. STAT. chapter 51 emergency detention. Nierenberger, a young Army veteran suffering from post-traumatic stress disorder (“PTSD”) who was detained after threatening to take his own life, argues that he should not be required to pay the Hospital because he did not meet the criteria for emergency detention under WIS. STAT. § 51.15. He further argues that the consent form he signed agreeing to pay for medical services was invalid because he signed it while handcuffed to a gurney. For the reasons that follow, this court affirms the judgment.

BACKGROUND

¶2 On August 20, 2011, Nierenberger’s wife called police to report that her husband had gone missing following an argument and posed a potential suicide threat. According to the police report in the record, Nierenberger had recently been medically discharged from the Army and was being treated for PTSD. He was depressed and despondent. Moreover, Nierenberger had, after arguing with his wife about daycare for their young children, left the house saying “something to the effect that ... their children would be taken care of with his life insurance money.” After Nierenberger left the house, his wife checked their gun safe and noticed that his 9-mm pistol was not there. Fearing her husband might commit suicide, she called police.

¶3 Village of Eagle police located Nierenberger a couple of hours later. Nierenberger was advised that he was being placed into protective custody under WIS. STAT. chapter 51, and asked whether he would like to comment on the

² This amount also includes costs associated with the lawsuit.

evening's events. Nierenberger responded that "he would rather just talk to someone at Mental Health," but later "admitted he said some things he probably shouldn't have regarding suicidal threats."

¶4 Thereafter, Nierenberger was taken to Waukesha Memorial Hospital for medical clearance. According to Nierenberger, once at the hospital, he was asked if he had any complaints. He answered that he did not. He was then asked if he was suicidal or homicidal. Nierenberger responded that he was not. Hospital staff performed an initial screening and began blood tests. After the initial screening and blood tests, a hospital staff member presented Nierenberger with a consent form for admission and treatment. Nierenberger, who was still handcuffed to the gurney on which he was seated, signed the form. Nierenberger was then cleared from the hospital and taken to the Waukesha Mental Health Center. Following Nierenberger's emergency detention, Waukesha Memorial Hospital billed him for services relating to his visit. The bill totaled approximately \$1300.

¶5 Nierenberger contested the hospital bill and the matter was heard in front of a court commissioner, who granted judgment to Waukesha Memorial Hospital and assessed costs, bringing the total amount owed to \$1803.34. Nierenberger then requested a trial *de novo*, and a court trial was held.

¶6 At the court trial, a billing supervisor for Waukesha Memorial Hospital's parent company testified that the Hospital attempted to bill an insurer for services provided during Nierenberger's emergency detention, but coverage was denied. The hospital's billing supervisor testified that the charges were for

time spent in the emergency room as well as for lab tests.³ She also testified that, according to the bill, the tests billed for were actually performed and that the procedures billed for were “ordinary and customary.”

¶7 At trial, Nierenberger, representing himself, testified that he was contesting the charges because he did not want to be detained and because he was not actually suicidal on the evening of the incident:

The date I was taken to Waukesha Memorial Hospital, I was taken under police custody.... From that point on, I was taken to Waukesha Memorial Hospital ... for medical clearance.... It wasn't for anything due to me having pains or trouble breathing or loss of life. The chief reason I was there was for medical clearance to Waukesha Mental Health by the police report. So, the reason I'm challenging this whole thing is I was taken against my will. I didn't want to go. I didn't have a reason to go. It's stated in the ER report that I wasn't suicidal, I wasn't homicidal.... So, I guess ... I don't feel like I should be responsible for paying ... because I was forced into it. And ... at the time that I had signed [the consent form] I was handcuffed to a gurney. I didn't get a chance to read it. I know in front of the Court Commissioner they said it wasn't a good excuse for doing that, but that the time after being taken into police custody at gunpoint, being told I was going to kill myself, I wasn't exactly thinking about what I was signing. I was trying to get out of the situation. I wasn't trying to make it any worse.

¶8 Nierenberger further testified that he contacted his insurer and was told that the reason the charges were not covered was because they were billed as “clerical” instead of “emergency.” He explained that his insurer had communicated that to obtain coverage, “the only thing that would have needed to be changed is the way it was classified” and that “the reason why they denied it was because it was classified as clerical or administrative or something like that.”

³ The itemized bill does not appear in the record.

¶9 At trial, Nierenberger also argued that because he did not want to be taken to the hospital, he was “forced” “into commerce.”

¶10 The trial court concluded that Nierenberger was liable to pay the hospital bill and costs, finding:

What we have here ... is not a situation of your being forced to engage in commerce. You were taken into custody by law enforcement ... on what we call or refer to as an emergency detention. That’s under Chapter 51.... Medical clearance occurred and then you were placed. So, from that perspective, I would agree, this may not have been something you specifically consented to or you wanted on a voluntary basis because you perceived you needed medical treatment, but nonetheless, at least at this point there’s nothing to indicate that your having been taken into custody was inappropriate or should not have occurred....

The trial court determined that the total for services plus statutory costs came to \$1803.34.

¶11 Nierenberger appeals. Further facts will be developed as necessary below.

ANALYSIS

¶12 Nierenberger raises two issues on appeal. First, he argues that he should not be held responsible for the hospital bill because he did not meet the criteria for emergency detention under WIS. STAT. § 51.15. He argues that he was consequently “forced into commerce” by being held responsible for medical services that he did not want or need. Second, Nierenberger argues that the consent form he signed agreeing to pay for medical services was invalid because he signed it while handcuffed to a gurney. This court reviews both issues *de novo*. See *Ethelyn I.C. v. Waukesha Cnty.*, 221 Wis. 2d 109, 114-15, 584 N.W.2d 211

(Ct. App. 1998) (validity of chapter 51 detention); *cf. State v. Giebel*, 2006 WI App 239, ¶11, 297 Wis. 2d 446, 724 N.W.2d 402 (whether particular circumstances constitute valid consent is a question of law reviewed *de novo*).

¶13 This court concludes that Nierenberger’s emergency detention was valid. Pursuant to WIS. STAT. § 51.15, the emergency detention statute, a law enforcement officer may take an individual into custody if the officer has cause to believe that the individual is mentally ill and evidences a “substantial probability of physical harm to himself ... as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.” *See* WIS. STAT. § 51.15(1)(a)1. As noted in the police report, at the time of the incident, Nierenberger had recently been medically discharged from the Army and was being treated for PTSD. He was depressed and despondent. Moreover, Nierenberger had, after arguing with his wife about daycare for their young children, left the house saying “something to the effect that ... their children would be taken care of with his life insurance money,” and had taken a gun with him. Thus, even though Nierenberger later told hospital staff that he was fine and not suicidal or homicidal, the facts before the court still give cause to believe that Nierenberger was mentally ill and that he evidenced a substantial probability of physically harming himself. *See id.*

¶14 Because Nierenberger’s detention was valid, the services rendered by Waukesha Memorial Hospital for the purposes of obtaining medical clearance to discharge him were not evidence of Nierenberger’s being “forced into commerce,” as he argues, but rather, were required by law. WISCONSIN STAT. § 51.15(5) allows an individual detained under the statute to be discharged only when the director of a facility where the individual was taken “determines that the grounds for detention no longer exist.” As noted, the services provided by the

hospital related only to Nierenberger's being cleared to be taken to the Mental Health Center. Nierenberger does not argue that any services provided related to anything but obtaining medical clearance. As the trial court explained:

If there's an issue where there's some question as to medical-related issues, there needs to be medical clearance before [individuals detained pursuant to WIS. STAT. § 51.15] can ... be placed into ... the mental health facility.... It's not something the sheriff's department can do. They cannot determine the individual to be medically cleared. They have an obligation.... They're required to make sure that if there's any question whatsoever, that one is medically cleared before they are put into [a] custodial situation. That would have been the reason for going to Waukesha Memorial Hospital. That happened and then you were placed. Medical clearance occurred and then you [Nierenberger] were placed.... Certainly, getting the medical clearance would have been appropriate....

¶15 Moreover, because Nierenberger's detention was valid, he was responsible for the resulting hospital bill. WISCONSIN STAT. § 46.10(2) provides that any person detained under WIS. STAT. § 51.15 "receiving care, maintenance, services and supplies provided by any institution ... shall be liable for the cost of the care, maintenance, services and supplies." See § 46.10(2); see also *Ethelyn I.C.*, 221 Wis. 2d at 120 (when chapter 51 detention is valid, detained individual bears responsibility for costs pursuant to § 46.10).

¶16 Contrary to what Nierenberger argues, the fact that he was handcuffed to the gurney when he signed the consent form does not absolve his responsibility for the costs. First, the consent form is of no consequence because the services rendered in this case—as far as what is discernible from the record—related only to ensuring that Nierenberger could be "cleared" for transport to the

mental health facility.⁴ Regardless of whether Nierenberger consented to additional medical treatment, hospital staff were required to obtain this clearance before discharging him. *See* WIS. STAT. § 51.15(5) (requiring treatment staff to determine that “grounds for detention no longer exist” before detainee is discharged). Second, even if the consent form was at issue here, this court is not convinced by Nierenberger’s argument that his signature on the consent form was invalid because he was handcuffed to a gurney when he signed it. Whether or not consent was valid depends on the totality of the circumstances. *Cf. State v. Phillips*, 218 Wis. 2d 180, 197-98, 577 N.W.2d 794 (1998). In this case, Nierenberger was handcuffed to the gurney following a suicide threat—a threat that was not only later corroborated by Nierenberger himself, but also by the fact that police found him with a gun. He points to no further evidence in the record showing that he was threatened or coerced to sign the consent form. Thus, in the absence of additional evidence to the contrary, this court concludes the handcuffs were placed on him for his safety, not as a coercive tactic.

¶17 As a final matter, this court notes that the fact that the hospital bill was not covered by Nierenberger’s insurance appears to have resulted from a clerical error. It is this court’s sincere hope that any errors regarding the classification of the bill can be resolved among the parties and/or the insurer such that the services rendered by the hospital receive insurance coverage if applicable.

⁴ This court also notes that in his reply brief Nierenberger agrees “that the consent form is irrelevant.”

¶18 In sum, because Nierenberger's WIS. STAT. chapter 51 detention was valid, and because his arguments regarding consent are unavailing, this court affirms the trial court's judgment of \$1803.34.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. § 809.23(1)(b)4.

